

Basics for Evaluating and Recovering Costs from Consultant Errors and Omissions

Wednesday June 14, 2012
3:00 PM



Learning Objectives

- Understand why FDOT pursues recovery of errors and omissions
- Understand the process for resolving and recovering cost associated with E&O
- Understand how cost are calculated to assess determine EOR responsibility
- Appreciate the importance of communication in resolving E&O issues



Authority

Florida Statute, Section 337.015 (3):

To protect the public interest, the department shall vigorously pursue claims against contractors and consultants for time overruns and substandard work products.



E & O Procedure

- Identify, Investigate, and Document E&O's
- Assess Consultant Responsibility
 - Engineer of Record (EOR)
 - Construction Engineering Inspection (CEI)
- Pursue Recovery for Damages

Topic No.: 375-020-010-d Errors, Omissions, and Contractual Breaches by Professional Engineers on Department Contracts



Definitions

Engineer of Record (EOR):

“A Florida professional engineer who is in responsible charge for the preparation, signing, dating, sealing and issuing of any engineering document(s) for any engineering service or creative work.” For this procedure only, the EOR is a professional consulting engineer retained by the Department to provide said services.



Definitions

Errors and Omissions:

Acts of negligence committed by the EOR in the performance of engineering design service or creative work, and acts of negligence committed by CCEI in the performance of construction engineering inspection services.



Definitions

Negligence:

As defined in *Rule 61G15-19.001(4), Florida Administrative Code*: "A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in *Section 471.033(1) (g), F.S.*, is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles."



Definitions

Premium Costs:

The additional cost of a contract change that would not have been incurred if the work had been included in the original contract. More specifically, premium costs are dollar amounts paid for non-value added work. Delays, inefficiencies, rework, or extra work as shown below, other than those caused by the contractor and/or his subcontractors or suppliers, will be considered as non-value added work.



Process



- Discovery
- Contract Modification
- Recovery
- Tracking or Reporting



Discovery

- Establish a partnership among CEI, DPM, and EOR to resolve project issues
- Promptly notify EOR evaluate issue & respond to CEI
 - Telephone call
 - Written confirmation (e-mail)
 - Early Notification
- Initiate Post-Design Services
- Focus on the Fix
 - Minimize interruptions to construction contract
 - Coordinate with legal staff as necessary



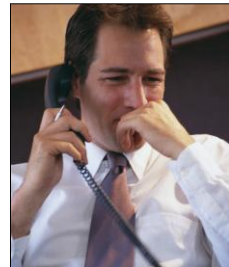
Construction Contract Modification

- DPM & EOR Participation:
 - Solve Problem/Fix Plans
 - Assess Responsibility
 - Review Cost & Time Calculations
 - Agree on Contract Change Coding
- E & O Notification Letter



Recovery

- Any Premium Cost
 - No Threshold
- Professional Judgment
 - Negligence
 - Business Decision
 - Likelihood of Recovery
- Escalation
 - Project Level Resolution
 - Director of Transportation Development Review
 - Litigation



Reporting and Collecting

- Funds Returned to Districts
- In Kind Services
- District Liaisons
- Tracking System



Premium Cost Calculation

- Occurs during the Construction Contract Modification
- Non-Value added costs
 - Work Delays
 - Rework
 - Extra Work



Construction Engineer Actions

- Initial Assessment for coding change
- Preparing Engineer's Estimate
- Assessing Schedule Impacts and Cost
- Entitlement Analysis
- **Premium Cost Analysis**
- Preparing Contract Modification



Example

The EOR fails to include erosion control features at the end of a large drainage system outlet and severe erosion occurs. Stone is added by an overrun of existing pay items. The construction critical path is not impacted.



Example



Contractor constructed a driveway as identified in plans. Later, the Department directed the contractor to remove and replace driveway at different location due to agreement with local owner. Payment was handled as overrun to existing pay items.



Example



The EOR fails to identify the power source and Connection details for a new signal. The contractor requests instruction on where to locate the power source for the signal. CEI documents the contractor is delayed 18 days while waiting on direction from the EOR. The contractor files a claim for delay damages in accordance with specification 5-12 and is paid.



Example

On a Lump Sum milling & resurfacing construction project Let in January 2010, the Department discovers in January 2011 an error has been made by the EOR. A turn lane was omitted from the construction plans which was identified as required when the project was in the early design stages. The Contractor has completed all paving operations except for the friction course. The District decides to proceed with adding that turn lane to the project. The Engineer has determined that this issue qualifies as a "significant change" as defined in Standard Specification 4-3.1 due to a change in the character of the work. The Contractor submits a price to the Department for mobilizing of grading equipment/crews, excavation, stabilization, base, additional asphalt costs due to pricing increases above the 2010 bid prices, overhead and additional time to perform the work. The Contractor's price is reviewed and accepted by the Department.



Example

During construction of a roadway widening project, it was Discovered a planned surcharge would affect an existing buried fiber optic line that was not scheduled to be relocated. The impact to the fiber optic line was it would not be able to withstand the planned settlements due to the surcharge. The Department delayed the contractor's work in this area to allow the utility owner to relocate its fiber optic cable. The contractor was able to mitigate the majority of the delay by working in other areas and on other phases of work. The Contractor submitted extra costs for delays and inefficiencies and were paid by the Department.



Coordination and Communication

- CEI prepares SA with input from DPM & EOR
- DPM reviews CEI assessment of responsibility and premium costs and investigates EOR liability based on scope of work, standards, and Department instructions
- DPM seeks advice from General Counsel regarding determination of EOR negligence and likelihood of recovery
- Construction and Design personnel agree on assessment of EOR liability for premium costs



Good Communication Skills

Person-to-person
Telephone
Team meetings
E-mail
Written

Listening

- **The most ignored communications skill**
 - A good listener forces themselves to concentrate
 - Paraphrase the speaker's main points before responding demonstrates the listener is paying attention
- **Be perceptive to note what is not being said**
 - Most PMs need a great deal of practice to be effective listeners
- **Effective listening requires both self-discipline and humility**
- **Tip: Listen, confirm what you heard, reconfirm what you heard.**



Summary

- Why Errors and Omissions are important
- Process for resolving and recovering E&O Costs
- Cost calculations and determination of responsibility
- Importance of communication



Questions

